

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

ALAN MCCORMACK,

Petitioner,

v.

Case No. 04-CV-1095

JODINE DEPPISCH,

Respondent.

ORDER DENYING MOTION TO STRIKE

Alan David McCormack (“McCormack”) filed a petition for a writ of habeas corpus on November 10, 2004. A preliminary examination of the petition was made under Rule 4, Rules Governing Section 2254 Cases, and on February 8, 2005, the court ordered the proceedings stayed in order to allow McCormack to file a post-conviction motion in the Wisconsin state court. Then, in July 2006, the petitioner filed a motion to amend his petition which the court granted in an order dated January 3, 2007. The court ordered the amended petition be served upon the respondent and further ordered the respondent to answer grounds one through six of McCormack's petition within 30 days after service of the petition. All parties have consented to the jurisdiction of the magistrate judge.

On February 5, 2007, in place of its answer, the respondent filed a motion to dismiss along with a motion to stay the time to answer the petition pending a resolution of its motion to dismiss. On February 9, 2007, this court granted the respondent's motion to stay the answer and ordered McCormack to respond to the respondent's motion to dismiss no later than February 26, 2007, and permitted the respondent to reply no later than March 12, 2007.

On February 21, 2007, McCormack filed a motion to strike the respondent's motion to stay the answer on the basis that it was allegedly untimely filed for not having been filed within 30 days of this court's January 3, 2007 order.

Pursuant to Federal Rule of Civil Procedure 6(e), when service is effected through the mail, "3 days are added after the prescribed period would otherwise expire." On January 5, 2007, this court mailed to the respondent its order lifting the stay in this case. The respondent was not served electronically with this order. Therefore, the respondent had until February 7, 2007 to file its motion to dismiss. Thus, the respondent's motion was timely filed and McCormack's motion to strike the motion as untimely filed is **denied**.

The previously established briefing schedule shall remain in effect. McCormack shall respond to the respondent's motion to dismiss no later than February 26, 2007, and the respondent may reply no later than March 12, 2007.

SO ORDERED.

Dated at Milwaukee, Wisconsin this 21st day of February, 2007.

s/AARON E. GOODSTEIN
U.S. Magistrate Judge